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**Natalie E. Tennant**

Secretary of State  
State of West Virginia

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September 29, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Workforce West Virginia

RULE: New Rule, 96CSR4, West Virginia Prevailing Wage Act

DATE FILED AS AN EMERGENCY RULE: August 28, 2015

DECISION NO. 10-15

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in black ink, appearing to read "Natalie E. Tennant", is written over a horizontal line.

NATALIE E. TENNANT  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 10-15)

AGENCY: Workforce West Virginia  
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- par. 1 The Workforce West Virginia has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Workforce West Virginia filed this emergency rule with supporting documents with the Secretary of State August 28, 2015 and with the LRMRC August 28, 2015.
- par. 7 It is the determination of the Secretary of State that the Workforce West Virginia has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §21-5A-11 reads:

***§21-5A-11. Rulemaking.***

***(a) The Executive Director of Workforce West Virginia shall promulgate emergency rules and propose, for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.***

*All rules, whether emergency or not, promulgated pursuant to this section shall at a minimum:*

*(1) Define the regions of the state as used in the article;*

*(2) Establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages: Provided, That Workforce West Virginia may consolidate written objections for hearing and final determination purposes; and*

*(3) Propose any other rules necessary to effectuate the purposes of this article.*

*(b) Any legislative rule in effect prior to the effective date of this article implementing the provisions of this article is hereby repealed.*

par. 9        It is the determination of the Secretary of State that the Workforce West Virginia has not exceeded its statutory authority in promulgating this emergency rule.

par. 10        (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11        There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12        The facts and circumstances as presented by the Workforce West Virginia are as follows:

This rule is mandated in Article SA, Chapter 21 of the West Virginia Code, to determine very specifically the regions of the state for determining prevailing wage rates and to establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages.

par. 13        It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" and "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 10-15 or ERD 10-15 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Workforce West Virginia.



NATALIE E. TENNANT  
Secretary of State

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